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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,909	09/12/2003	Wolfgang Kempe	12755/3	6383
7590 Richard M. Rosati, Esq. KENYON & KENYON One Broadway New York, NY 10004				
			EXAMINER CHEN, CATHERYNE	
			ART UNIT 1655	PAPER NUMBER
			MAIL DATE 02/24/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/660,909

**Applicant(s)**

KEMPE, WOLFGANG

**Examiner**

CATHERYNE CHEN

**Art Unit**

1655

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-13 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-13, 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The Amendments filed on Dec. 7, 2009 has been received and entered.

Currently, Claims 1, 3-13, and 17 are pending. Claims 1, 3-13, and 17 are examined on the merits. Claims 2, 14-16, 18-19 are canceled.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 3-13, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsieh et al. (US 5424085) in view of Belzowski et al. (US 6207207 B1) for the reasons set forth in the previous Office Action, which is set forth below. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive.

Hsieh et al. teaches nuts or seeds are coated with emulsifier (Abstract), lecithin (column 5, line 22) optionally with chocolate (Abstract) as protective coating. It is desirable to apply a coating of edible shellac containing wax (column 7, lines 25-27). Nuts and seeds intrinsically have a spherical surface. Lecithin encompasses phosphatidylserine (see paragraph 2, <http://questthealthlibrary.com/other-supplements/lecithin>).

However it does not teach amounts of lecithin, millet, vitamins, minerals.

Belzowski et al. teaches starch based center comprised of a kernel or grain of millet (Claim 2), coated with sugar shell coating (Claim 1). Other additives, such as vitamins, minerals, fats, oils, and preservatives may be included in the starch based center. The starch base center may be fruit pieces, peanuts pieces. The starch center is present in an amount of about 30-100% (Column 2, lines 48-57). It is conventional to coat edible centers with one or more layers of sugar coating and the sugar shell may contain colorants and flavorants as desired (column 6, lines 21-22, 35-36).

Hsieh et al. teaches nuts or seeds are coated with emulsifier (Abstract), lecithin (column 5, line 22). Belzowski et al. teaches starch based center comprised of a kernel or grain of millet (Claim 2). Millet is a seed. Thus, an artisan of ordinary skill would reasonably expect that millet could be used as the types seeds coated with lecithin taught by the references. This reasonable expectation of success would motivate the artisan to use millet coated with lecithin in the reference composition. Thus, using millet coated with lecithin is considered an obvious modification of the references.

Applicant argues that the amount of lecithin is not taught.

In response to Applicant's argument, Applicant claims the amount of lecithin weights more than the plant product. Hsieh et al. teaches nuts or seeds are coated with emulsifier (Abstract), lecithin (column 5, line 22). The amount of emulsifier to coat the millet seed is determined by the thickness and desired mouth feel of the emulsifier. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make a composition comprising weight of the coating is greater than the weight

of the plant material for the following reasons. The reference does teach the composition for coating plant seeds. Thus, it would have been obvious to make a concentrated composition containing weight of the coating greater than the weight of the plant product for use to coat a seed. Additionally, the amount of a specific ingredient in a composition that is used for a particular purpose (the composition itself or that particular ingredient) is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results, especially within the ranges taught by the reference. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERYNE CHEN whose telephone number is (571)272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen  
Examiner Art Unit 1655

/Michele Flood/  
Primary Examiner, Art Unit 1655